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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,261	02/01/2001	Thomas E. Weston	IRI05338	7246

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MOTOROLA, INC.
CORPORATE LAW DEPARTMENT - #56-238
3102 NORTH 56TH STREET
PHOENIX, AZ 85018

EXAMINER

MILLS, DONALD L

ART UNIT	PAPER NUMBER
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2662

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DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/775,261

Applicant(s)

WESTON, THOMAS E.

Examiner

Donald L Mills

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Seo (US 6,463,044 B1), hereinafter referred to as Seo.

Regarding claim 1, Seo a method for controlling the traffic load of a base station, which comprises:

Establishing a desired quality level (Referring to Figure 3, a predetermined Threshold Frame Error Rate ($Th_fer(V)$) which is the maximum level of FER. See column 4, lines 36-37.)

Monitoring an actual quality level of the communications session (Referring to Figure 3, an Average Frame Error Rate ($AVG_fer(V)$) of the mobile stations receiving voice service is measured. See column 4, lines 31-33.)

Determining whether an average monitored quality level exceeds the desired quality level (Referring to Figure 3, if the $AVG_fer(V)$ is greater than the $Th_fer(V)$. See column 4, line 40.)

Increasing the actual quality level to the desired quality level of the communications session if the monitored actual quality level is less than the desired quality level (Referring to Figure 4, mobile stations stored in the queue are first reactivated to a level comparable to the

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Th_fer(V), if the TH_fer(V) is greater than the AVG_fer(V). See column 4, lines 65-66 and column 5, lines 5-6.)

Reducing the actual quality level to the desired quality level if the monitored actual quality level is greater than the desired quality level (Referring to Figure 3, the mobile stations are ordered from the mobile station with the smallest to the largest transmission data when the AVG_fer(V) is greater than the Th_fer(V). See column 4, lines 40-41 and 50-51.)

Regarding claim 3, Seo discloses *wherein said monitoring step includes monitoring one or more of the following: average packet delay; packet delay variation; number of error packets; number of error packet blocks; and number of miss-inserted packets* (Referring to Figure 3, the Average Frame Error Rate of the mobile stations is measured. See column 4, lines 31-33.)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seo (US 6,463,044 B1), hereinafter referred to as Seo, in view of Schuster et al. (US 6,512,761 B1), hereinafter referred to as Schuster.

Regarding claim 2 as explained above in the rejection statement of claim 1, Seo discloses all of the claim limitations of claim 1 (parent claim.) Seo does not disclose *generating an*

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adjusted billing statement reflecting any increases or decreases in the actual quality level from the desired quality level.

Schuster teaches when the transmission delay or jitter for the transmission of a given packet-based signal exceeds/or less than a predetermined threshold, then the billing entity may decrease/increase its fee for the transmission (See column 13, lines 44-53.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the billing system of Schuster in the system of Seo. One of ordinary skill in the art would have been motivated to do so in order to provide pricing that is reflective of the quality of service being provided as taught by Schuster (See column 14, lines 12-19.)

Regarding claim 4 as explained above in the rejection statement of claim 1, Seo discloses all of the claim limitations of claim 1 (parent claim.) Seo does not disclose *increasing the actual quality level to the desired quality level of the communications session if the monitored actual quality level is equal to the desired quality level.*

Schuster teaches when the transmission delay or jitter for the transmission of a given packet-based signal exceeds/or less than a predetermined threshold, then the billing entity may decrease/increase its fee for the transmission; providing the signal whether the actual delay or jitter is equal-to/less-than/greater-than the threshold (See column 13, lines 44-53.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the billing system of Schuster in the system of Seo. One of ordinary skill in the art would have been motivated to do so in order to provide pricing that is reflective of the quality of service being provided as taught by Schuster (See column 14, lines 12-19.)

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Regarding claim 5 as explained above in the rejection statement of claim 1, Seo discloses all of the claim limitations of claim 1 (parent claim.) Seo does not disclose *reducing the actual quality level to the desired quality level if the monitored actual quality level is equal to the desired quality level.*

Schuster teaches when the transmission delay or jitter for the transmission of a given packet-based signal exceeds/or less than a predetermined threshold, then the billing entity may decrease/increase its fee for the transmission; providing the signal whether the actual delay or jitter is equal-to/less-than/greater-than the threshold (See column 13, lines 44-53.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the billing system of Schuster in the system of Seo. One of ordinary skill in the art would have been motivated to do so in order to provide pricing that is reflective of the quality of service being provided as taught by Schuster (See column 14, lines 12-19.)

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Mills whose telephone number is 703-305-7869. The examiner can normally be reached on 8:00 AM to 4:30 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 703-305-4744. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Donald L Mills

April 18, 2004


HASSAN KIZOU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600